

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Derris Smith,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:10cv852
vs.	:	
	:	Chief Judge Susan J. Dlott
Warden, Lebanon Correctional Institution,	:	
	:	
Respondent(s).	:	

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Michael R. Merz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on December 15, 2011 a Report and Recommendation (Doc. 10). Subsequently, the petitioner or in this case his father, filed objections to such Report and Recommendation (Doc. 11).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendation should be adopted.

Accordingly, all of petitioner's claims are subject to dismissal as procedurally defaulted. His claims about the weight of the evidence are not federal constitutional claims. There was sufficient evidence upon which to base a verdict.

Therefore, the petition is **DISMISSED** with prejudice. Since reasonable jurists will not disagree, petitioner is **DENIED** a certificate of appealability and this Court will certify to the Sixth Circuit that an appeal would be frivolous, precluding an appeal *in forma pauperis*.

IT IS SO ORDERED.

s/Susan J. Dlott
Chief Judge Susan J. Dlott
United States District Court